

TOWN OF KITTERY, MAINE  
PLANNING BOARD MEETING  
Council Chambers

APPROVED  
August 29, 2013

Meeting called to order at 6:06 p.m.

Board Members Present: Tom Emerson, Deborah Driscoll, Ann Grinnell, Rich Balano, Bob Melanson

Members absent: Susan Tuveson, Mark Alesse (recused)

Staff: Gerry Mylroie, Planner

Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Public Comments: There was no public comment

PUBLIC HEARING

**Stone Meadow Cluster Subdivision, Brave Boat Harbor Rd.** Public hearing and preliminary plan review. Owner Acadia Trust, N.A, and applicant Harbor Street LP, is requesting approval of their plans for a 27-lot subdivision on a 59.8 acre parcel off Brave Boat Harbor Rd., Tax Map 69, Lot 6, Residential-Rural and Shoreland Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Durward Parkinson, Attorney for Applicant, noted they will address the new information and reports presented to the Board, specifically how this project can be considered a cluster subdivision. He introduced Jeff Clifford, Altus Engineering; Jim Logan will discuss the septic system issues; Jeff Durk, Traffic Engineer; Cynthia Fayer, Hydrology and well impact; Mark West, vernal pool and wetlands; and Joseph Falzone, principal, Stone Meadow LLC. He introduced Christine Bennett, Executive Director, Kittery Land Trust (KLT). Ms. Bennett stated Kittery Land Trust as entered into a purchase and sale agreement with Stone Meadow LLC. Like many real estate transactions there are many conditions and contingencies to this agreement, including funding and financing by September 30, 2013. This marks the first time that KLT has utilized debt financing to secure property, speaking to the high importance of this specific area. If for any reason this financing is not successful in the next 30 days, a contingency allows the agreement will not be terminated, and includes an anticipated closing on December 2, 2013. The agreement allows for Stone Meadow LLC to pursue the subdivision permit during this 30-day period, and allows the applicant to request tabling of the review for the term of the agreement, recognizing Stone Meadow LLC retains its current options through the closing of the agreement, in early December. It is KLT's policy not to advocate for or against subdivision proposals in which they have no standing, or influence the Board's decisions or the public's right to be heard. Their purpose is simply to inform the Board and public of their intent to secure loans and funding to purchase the property. She noted their appreciation of Mr. Falzone's willingness to consider conservation of the property. (KLT presentation attached).

Mr. Parkinson stated the applicant wished to continue the process at this time, and request to return to the Planning Board at the first meeting in October to report on the progress of the agreement with the KLT. If the sale is successful, the application could be tabled indefinitely, but wish to retain their vested rights at this time. Mr. Emerson explained the 90-day window requires a decision by the Board by September 12. Mr. Parkinson stated he agreed, and felt a mutual agreement between the parties will satisfy that requirement.

Jeff Clifford, Altus Engineering:

Summarized how the project meets the Cluster Ordinance. On December 5, 2011 a presentation by Randall Arendt on Conservation Design was attended by Board members and engineers from Altus. Arendt explained:

- the goals of clustering is the conserving of land and creating an inter-connected network of open space;
- clustering can be accomplished in a way that respects the rights of landowners and the equity of developers to be able to build at full density;
- this density neutral approach respects the rights of private property owners and developers;
- this process...allows developers to maximize open space conservation without reducing overall building density.

Mr. Clifford noted the full density for this project is 40 units, however, they have reduced the density to 27 units. This project meets the objectives of a cluster ordinance, parts A-I as follows:

- A. efficient use of the land and water, with small networks of utilities and streets;

The road length was minimized with homes on either side of the road. A second access waiver is requested (over 200 trips per day and roadways greater than 1500 feet require a second access);

- B. preservation of open space and creation of recreation areas;

The entire property is 59.8 acres with 71% in open space (41.6 acres) where only 50% is required. This open space is conserved through DEP buffering and ordinance requirements.

- C. maintenance of rural character, preserving farmland, forests and rural viewsapes;

The applicant has reduced the size from 40 to 27 lots; provided a 100-foot wooded buffer on Brave Boat Harbor Road; the road design curves, eliminating the visual impact of a long roadway from the entrance; the roadway is not centered, with woodland buffers.

- D. preservation of areas with the highest ecological value;

Studies indicate significant areas of ecological importance specifically along the stream, with identified vernal pools. Development has been kept away from these areas.

- E. location of buildings and structures on those portions of the site most appropriate for development;

Building lots have been located away from the ecological sensitive areas as well as Brave Boat Harbor Road;

- F. creation of a network of contiguous open spaces or 'greenways' by linking the common open spaces within the site and to open space on adjoining lands wherever possible;

Large blocks of land along the perimeter are linked, creating a greenway for the highest value habitat.

- G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;

Including the roadway re-design, the smaller 20,000 sf lots reduce the size of homes to be built; protective covenants on some parcels further restrict development; series of natural buffers is an effective method for stormwater management, reducing land disturbance;

- H. preservation of historic, archaeological, and cultural features; and

A detailed archaeological study has been conducted, and a preservation area is proposed at lot 24;

- I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment.

Buffers surrounding the property line; school bus drop off is provided; a traffic study indicates minimal impact on Brave Boat Harbor Road.

He noted the Comprehensive Plan suggested density in the Rural-Residential zone at 1-3 acres per dwelling unit depending upon soils, though the ordinance requires a minimum lot size of 40,000 sf. This site provides an overall average of 2.2 acres per lot, 1.9 acres of upland per lot, and 2.5 acres per lot allowing for 25% of wetland area per lot, all well within the Comprehensive Plan.

He presented designs from the Arendt publication, illustrating both typical subdivision vs. cluster design, and noted that placing homes on both sides of the roads meets the definition of a cluster development.

The traffic consultant and MDOT specifically identified Brave Boat Harbor Road as a collector road, which does not require a 1,000-foot separation between secondary access roads.

He noted that the Board revised the Cluster Ordinance to allow for alternative methods in the design for water and sewer systems instead of public or privately shared systems, allowing for flexibility. The developer is open to utilizing an advanced treatment system for this project.

Jim Logan, Albert Frick Associates:

Explained that engineered/community septic systems are contraindicated for clustered subdivisions. These systems handle over 2,000 gallons of wastewater per day in one location; with this project, the system would have to handle over 7,000 gallons per day in one location. Concerns about water quality and nitrates with this type of system are well-founded. If the system ever broke down, all 27 houses could be shut down at the same time. With a single system, a breakdown is isolated and the problem easier to identify; whereas locating the source of the problem with a community system could be difficult and time consuming. Individual responsibility for septic maintenance is a much safer and more reliable method. These community systems also require large areas for clearance and installation which is counterintuitive to a cluster development. If advance treatment is utilized, measurement is 10 mg / liter nitrate at the unit vs. the property line for conventional systems. In addition, the quality of wastewater is equal to rainwater because of the advanced treatment, and the size of each system can be reduced, resulting in less clearing for installation.

Jeffrey Durk, Vanasse and Associates, Traffic Engineers:

The report primarily focuses on the access to Brave Boat Harbor Road, indicates two-way traffic, including service vehicles, will total just over 300 vehicle trips per day. During peak traffic hours (commuter hours) this will generate approximately 30 vehicle trips. This level of traffic loading does not affect traffic operations on the roadway, and once on Brave Boat Harbor Road the trip increases average 10-16 vehicles over the course of an hour, which is not a large traffic loading. The appropriate and safe location of the entrance to the project off Brave Boat Harbor Road is primary, including site line (stopping and intersection) distances. Over a two-day period, over 3,000 vehicles were counted traveling Brave Boat Harbor Road and, measuring 85% of the vehicles traveling speed, site distance was designed to meet a 40 m.p.h. speed. A detailed site distance design has been prepared. He noted the studies indicate the project can be constructed as designed without degrading public safety and welfare. Recommendations for roadway design, school bus stop location and pedestrian circulation have also been submitted. The volume measurements on Brave Boat Harbor Road on a Saturday increase to 2100 vehicles, from a weekday volume of 1400. A comparison between the weekday traffic conditions vs. weekend did not alter the findings and recommendations previously submitted. Regarding the functional classification of Brave Boat Harbor Road, the MDOT and the Federal Highway Administration have

identified the road as a collector roadway. The ordinance states a collector roadway is classified as 3000 average daily traffic; Brave Boat Harbor has an average daily traffic of approximately 1500. The MDOT and FHA classifications are based on functional mobility, not traffic, with collectors providing a connection to arterial roads (such as Route 1 and 1A).

Cynthia Thayer, Chief Geohydrologist, Gillespie & Associates:

Referenced a prepared report (July 2013) that addressed stormwater, water supply, and wastewater disposal impact. The report followed DEP protocol for the Site Location of Development permit. The report included physical site investigation, soil scientist test pit logs, and the location of the corners of every leach field, which provided sub-surface conditions on each lot. Calculations were conducted for nitrate attenuation. The drinking water standard for nitrate is 10 mg/liter; with an untreated average of 40 mg/liter for most homes. The conclusion found that about 50 feet from the leach field, nitrates attenuate to 10 mg/liter. Individual water supply wells must maintain a minimum of 100 feet from septic systems (well exclusion zone), and based on the analysis, there is sufficient area on each lot to accommodate septic systems and water wells. Use of individual wells spreads out withdrawal within the bedrock aquifer, utilizing bedrock supply wells. Data from Maine Geological Survey and well drillers indicated on-site supply wells is appropriate for this location. She explained the aquifer is renewable and, assuming that only 10% precipitation (conservative) penetrated to recharge the aquifer on-site only, a withdrawal of 270 gallons per day per 3-bedroom home (State Plumbing Code average), would result in over 50% recharge remaining in the aquifer. A four-bedroom home, utilizing 360 gallons per day, resulted in a use of 50%, leaving 50% on site. The water being extracted from the ground is returned to the ground, it is not going into a sewer system or running off in a significant way from the site, but returning to replenish the aquifer. Studies indicate the water supply is sufficient and the resource will not be depleted. The use of advanced pre-treatment would have made the wastewater findings in their report inconsequential.

Jeff Clifford noted the Land Use Code requires a stormwater management plan and the DEP requires the use of natural buffers in the plan to reduce runoff and cool the water. Stormwater analysis is a major component of the DEP required Site Location permit application. The Site Location permit also allows for public comment to the DEP at any time on any aspect of the application. Pavement has been minimized on the site through the design of smaller lots and the requested waiver for a second access road. They are proposing walkways alongside the roadway rather than separately, which would impact the stormwater analysis and design, and request a determination from the Board regarding the proposed walkways.

Mark West, Wetland and Wildlife Biologist, West Environmental:

Two studies were conducted for the property based on input from Inland Fisheries and Wildlife: a mechanical survey to locate potential rare plants in areas of the development envelope, and a study within four miles of the project for spotted turtles, Blanding turtles and ribbon snake as part of the wildlife habitat study. In relation to the species, it was found the most likely location for the turtles is the open emergent marsh on the property, though none were seen. Wildlife movement, such as deer, was noted along the stream area to the north and this area was ranked high. Ranked next was an amphibian breeding area near the site exit, where a small culvert already exists in the area of the proposed road crossing, for which the DEP would require an increased opening of the culvert. Ranked third were vernal pool habitats, including one off-site. In general, the development is clustered away from the most important habitats on the site. No rare plant species were found on the site.

Mr. Clifford stated the DEP and Army Corps of Engineers have validated Jim Noel's vernal pool studies and concurred with his identification of those pools that were insignificant.

Break

Mr. Emerson noted this is the second public hearing, called to specifically to address information presented since the first public hearing.

The Public Hearing began at 7:33 p.m.

Sarah McDaniel, Attorney, representing abutters Kalmar and Hill:

Stated she has submitted three communications to the Board regarding this project, and requests the Board acts within the time frame and deny the application rather than entertain continuance of the project as requested pending the purchase and sale agreement with the KLT. Procedurally, the project is at the preliminary plan stage and is the plan feasible to meet ordinance standards for preliminary approval. She stated the waivers required to complete the plan are not within the Board's jurisdiction to answer, and must be handled by the Board of Appeals. Previous granting of waivers by the Board has no jurisdiction over the current property; each property is unique; prior bad decisions or illegal granting of waivers have no basis for continuation of such actions. Land unsuitable for development means you can't place homes or septic systems on such land and, when calculating net residential acreage, this land must be excluded. In this project, such exclusions have not been taken into account. Though the referenced document [Soil Suitability Guide] may be outdated, the ordinance must be applied as it is written. The traffic study indicated 300 daily trips so the project must have two entrances, per ordinance, regardless of how Brave Boat Harbor Road is classified. The applicant is requesting a waiver of this requirement. The proposed road length is in excess of ordinance standards, and those proposed lots beyond the allowed road length for a single access should not be approved. Though the road length has been reduced from the first submittal, it is still longer than allowed without a waiver, which the Board has no authority to grant. Mr. Arendt's publications are not designed for Maine. The Kittery definition of cluster is vague. The state definition of cluster development is *individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture, and the reduction in the size of road and utility systems*. The only items the Board may waive are lot area, lot coverage, frontage, and setback requirements. Just because you received reports from experts does not mean the reports meet the standards. For example, reduction of the roadway and DEP lot covenants reducing house sizes will minimize runoff. Will the Board have a condition that all houses built be no greater than a certain square footage? The concept of a cluster subdivision is the applicant protects more land than what they would otherwise have to. The applicant has not shown how the project will minimize its impact on neighboring properties or municipal services. The traffic engineer noted the road entrance is ok as designed, but the ordinance requires two entrances, and no design for a second entrance was provided with traffic counts. It is appropriate to deny this plan or place conditions on its approval. Such conditions may include removal of lot 24 noted in the archaeological report and removal of development close to the highly ranked environmental resources.

Mr. Parkinson asked if the Board would like legal rebuttal at this time or when the Town Attorney is present. Mr. Emerson stated the Board would decide if the Town Attorney will be called.

Michael Cuomo, Soil Scientist:

Referenced his letter of August 20 that noted errors in reports submitted by the applicant's consultants. Specifically, the report by Ms. Thayer did not include any on-site water quality testing and made assumptions on the nitrate level and aquifer recharge. The report from Mr. Logan regarding community septic systems was exaggerated, and design features can be built in to prevent entire system shut down. Al Frick, Mr. Logan's boss, even supported a community septic system. Whether 7,000 gallons is located in one site or multiple sites, it is still on this site. The Town requires reserve systems and these were not addressed. Also, there is no drainage design so the potential location of septic systems near drainage areas cannot be determined, and this is of concern. Flood Zone A is shown and development needs to be excluded from this area; the applicant states the rate map is wrong and, if so, the applicant should correct this.

Mark Gendron, 181 Brave Boat Harbor Road, explained his well is 265 feet deep and before he can fill his hot tub they are pulling sand from the well. The Gillespie report stated a three-bedroom house draws 270 gallons per day instead of the code amount of 350 gallons per day per house. Even at the lower rate they state the withdrawal from the aquifer would be 40%, and this would be greater at 350 gallons. We have no idea how large this aquifer is, where the water runs underground, and who will be affected by this usage. Many of the local wells are barely sufficient now, even for immediate abutters. If another town stated they were going to use 40% of Kittery's reservoir, people would be concerned. A larger aquifer is needed to supply the 3,449,250 gallons per year needed for this development. This is not an appropriate place for a high density development. He asked members of the audience to raise their hands if they felt the aquifer depletion and water quality is of concern.

Charlie Simpson, 71 Brave Boat Harbor Road, stated his interest is the traffic impact assessment. He indicated Brave Boat Harbor Road is not safe now and will not be any safer if this development is built. The report did not address Sunday traffic which is extremely high, especially in the summer. During the week, 316 daily round-trips is a 25% increase. The study concludes the increased traffic will have no impact on current traffic conditions, will generate no discernible safety issues, and will not impact traffic operations, motorist delays or vehicle cueing on Brave Boat Harbor Road. This is hard to believe since this road has no shoulders, no bike lanes and minimal enforcement – discernible safety issues already. These are the problems with the study:

- 1- It only looks at daily traffic in an area that is rural and under populated and does not reflect traffic in other areas of Brave Boat Harbor Road.
- 2- The calculations only relate to traffic in front of the development and drawn from only three days of traffic operation and this cannot provide sufficient data.
- 3- The crash data report only included three years of data.

This report is too limited in scope and to apply the conclusion that travel on Brave Boat Harbor Road is safe because it is safe in front of the development is misleading. The study shows that over 50% of Brave Boat Harbor Road drivers exceed the speed limit, which means over 650 drivers exceed the limit. The development will place 158 new violators on the road. During the three day assessment period in June, the weather was rainy and foggy which would not provide for adequate assessment. On the third day, a Sunday, the assessment was not included. A recent Sunday count from 4:45-5:00 p.m. showed 69 vehicles passing in 15 minutes, or over 300 cars per hour. The conclusions seem to lack validity and before any decisions are made, the Board should consider the impact on Route 103 traffic from York to Kittery. He is still concerned about the safety of Brave Boat Harbor Road and asked audience members to raise their hands if they were also concerned.

Tom Hibschan, 188 Brave Boat Harbor Road, presented a video of the 69 cars passing in 15 minutes [to staff]. He asked if bicycle traffic had been included in the study. The runoff from the project flows under Payne Road and into York, which owns half of Brave Boat Harbor, which may require communication with the Town of York.

Ashley Hoefler, 110 Bartlett Road, noted her well goes dry all the time and noted her concern about water availability.

Megan Kline, 6 Juniper Point, asked the Board to encourage Cape Code curbing and sidewalks in the development, as well as along the Brave Boat Harbor Road for pedestrian use and safety.

Karen Kalmar, 191 Brave Boat Harbor Road, asked that the public be able to respond should a second roadway plan be presented. She listed her concerns about two access roads including: vegetation clearing in the Shoreland Overlay, bad site lines, steep slopes, cemetery no-disturb area, possible stormwater impact, etc. Leaving trees between the development and surroundings doesn't preserve rural character but only camouflages urban character, and asks that no additional roads access Brave Boat Harbor Road.

She noted the wildlife report cannot possibly show an adequate picture of the land. They have seen the Blanding turtles and are worried about their ability to cross lawns and roads to her pond. They see otters, mink and deer regularly, and the property also has hawks, eagles, owls, fisher cats, coyotes, foxes, moose, bearcats and more. She is a strong supporter of wetlands and believes the upland forest should be preserved, and asked for audience support by a showing of hands. She thanked all the Friends of Brave Boat Harbor for their support.

Kathy O'Neal, 193 Brave Boat Harbor Road, addressed the cluster ordinance. Why has the applicant expended such a large amount of money on experts? Is it to circumvent the code or find loopholes? It is her opinion the development does not meet the standards for cluster development:

1. There are no small networks of streets or utilities (sewer and water).
2. The land is full of ledge, outcroppings and poorly drained soils, requiring fill which does not meet code regarding land not suitable for development.
3. There is no physical evidence of available water; there was no testing, only formulas.
4. Contiguous open space has not been created. They have simply placed a border around the subdivision.
5. The ordinance requires the development meet all applicable federal, state and local ordinances, but this proposal: improperly calculates net residential acreage; includes plans for individual septic systems on poorly drained or filled soils; provides no accurate account of a physical aquifer; the road deviates from code requirements; no second entrance as required.

In conclusion she requested the plan be denied based on code violations and that it does not adhere to the cluster development ordinance, and asked for a show of hands from those who agreed with her position.

Steve O'Brien, 84 Brave Boat Harbor Road, noted his concerns about traffic on the road, explaining he watched a man die a few feet from his mailbox and is opposed to any additional traffic on Brave Boat Harbor Road.

Susan Emery, 5 School Lane, noted the developer indicated this project is consistent with certain parts of the Comprehensive Plan, but she believes the scale is not consistent with the Comp Plan.

Mr. Emerson stated this meeting is not to discuss the Comprehensive Plan as this was discussed at the prior hearing. Ms. Driscoll noted that Vern Gardner made substantial comments regarding the Comp Plan.

Ms. Emery stated that Route 103 is not only a collector road but a scenic road as identified in the Comprehensive Plan, and changes should not be made. She submitted her testimony, and commented that historically, when reviewing large scale projects, past Boards would include the Comprehensive Plan when basing their decision.

Dean Rykerson, Salt Marsh Lane, noted there was a fatal accident within one mile of the project. In reading the traffic study, trips on a Thursday increased by 49%, and looking at accidents in the immediate vicinity is misleading. Between 2008 and 2012, there have been 108 crashes between Kittery Point and York Village on Route 103. Because the traffic study is really misleading, what are we really seeing from these expert studies? Compliance with the Arendt concept of cluster design does not fit all situations. There are other appropriate areas for development and increased housing, which already include infrastructure.

Jim Vankennen, 19 Short Farm Road, learned that advanced treatment turns nitrate from the septic system into nitrogen gas.

Kate Mitchell, 63 Haley Road, stated she saw sand while on the site walk though it was said there was no sand or gravel on the site. She expressed her agreement regarding the reduction in the rise at the entrance and the use of wooded buffer areas for stormwater management, but noted the entire area is currently a wooded buffer area and the neighbor's road has been washed out four times. She also noted there may be a need for a flood zone assessment based on the FEMA evacuation signs on the road. There was clear evidence of deer bedding, apple trees and acorns on the site walk.

Earldean Wells, Kittery Conservation Commission, asked for the exact square footage of wetland impact and if there is more than one wetland impacted. Since the Gillespie report was based on three bedroom homes, KCC is requesting a condition that homes be limited to three bedrooms. The KCC believes the applicant has not satisfactorily addressed the requirements of Title 16.8.11.1:

- A. efficient use of the land;
- G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff
- I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment

She stated she was on the first site walk in the spring while there was snow on the ground and felt that Mr. West's wildlife delineation did not encompass the area properly. They found scat, footprints and deer bedding in a very narrow area. Lots 4, 5 and 6 may be in the 100 year floodplain. A letter from the Shellfish Warden expressed his concern about the impact on Brave Boat Harbor, noting this is the only clean water in Kittery. The KCC has conducted water quality monitoring for 12 years. The Warden would like any information on the projected increase in pollutants from this development.

Public Testimony ended at 8:57 p.m.

Durward Parkinson explained there is a state statute that allows Boards to adjust dimensional standards in cluster developments, called modifications in the ordinance. The ordinance clearly allows waiver language when there are compelling reasons. The Soil Suitability Guide is obviously antiquated but its application has been addressed with a waiver request. Procedurally, he noted his concern that input can be submitted up to the time of decision. The applicant would be willing to meet at the first meeting in October following the KLT September 30 purchase and sale date.

Jeff Clifford stated the wetland impacts total 600 square feet. He understands the concerns noted by the KCC were noted prior to this meeting, and believes they have now been addressed. Regarding the second access issue, a plan was presented in April illustrating the emergency access road, and the recommendation was to remove the emergency access road. Previously approved projects with comparable roads include Fuller Brook at 2,350 feet; Clover Landing, 2,000 feet; Lewis Farm, 2,915 feet; Lewis Farm 2,100 feet ; Lynch Lane, 2,700 feet; Pinkham Lane, 2,600 feet; Cedar Drive, 2,600. Professional planners and a review engineer have reviewed the documents presented and concur the application is on course, pending further direction from the Planning Board. Mr. Falzone stated he is willing to put in the access road and not ask for a waiver.

Mr. Logan explained that Mr. Cuomo's statement that a community system supported by his boss, Al Frick, was a community system located in Haiti where there was no system at all. If there is a breakdown of a community system, there will be some service interruption, though perhaps not to all 27 homes in the development. A statement by another individual that septic systems will be sited on poorly drained soils is incorrect. They will be sited on well or excessively well drained soils. The comment regarding filling of land is incorrect as use of fill is a common practice in



foundations or around leach beds. The ordinance was referencing the filling of wetlands to create buildable area.

Cynthia Thayer stated she signed and sealed her report as a Certified Hydrogeologist in the State of Maine, which comes with a lot of responsibility, and submitted it to the DEP. It is not required that on-site samples be attained, and made the assumption of 2 mg/liter as background, where in most cases the background is 0 if the site is undeveloped, unless it was used as farmland. Regarding the number of bedrooms, the revised analysis used 360 gallons, and there was no change in their conclusion. Putting wells on the property before development is backwards; you drill the well and a second well if needed and perform a water quality test before it goes on line.

Jeffrey Durk explained the traffic study meets or exceeds the requirements of the Maine DoT and the analysis was done correctly, and the facts were based on DoT standards.

The Public Hearing closed at 9:17 p.m.

Ms. Driscoll asked about the April 11 meeting. Mr. Mylroie stated the sketch plan was approved at that meeting.

Mr. Emerson noted the application must receive Board action within 90 days which would be at the September 12 meeting. Mr. Melanson noted there are two sides here and the Board has the responsibility to address the facts, including the fact that a purchase and sale agreement is now part of the discussion.

Mr. Melanson moved to continue review and action on the Stone Meadow Cluster Subdivision on Brave Boat Harbor Road to the October 10 Planning Board meeting.

Mr. Balano seconded

Ms. Grinnell asked if this motion passes, will discussion cease at this time.

Mr. Emerson said discussion would end until October.

Motion fails with 2 in favor; 3 opposed (Emerson, Driscoll, Grinnell)

Mr. Emerson stated at the prior meeting Bill Straub, CMA, peer review engineer, discussed the issue regarding land not suitable for development and the particular reference to the Soil Suitability publication, and the Board concurred this publication is outdated and the Board needs to address this. Mr. Balano stated the applicant has asked for a waiver from the Board in regard to this requirement, driven by this outdated publication, but it needs to be addressed. Mr. Melanson asked if soil suitability should reference the state plumbing code. Ms. Grinnell noted this is what the code requires now, and everyone agreed that until this is changed the Board needs to follow the ordinance and she is not in favor of granting a waiver.

Mr. Emerson noted the street length waivers previously granted. The difference between those waivers and now is the current cluster ordinance was not in place. Much of what Randall Arndt proposes is pertinent in Maine and his studies make sense. The term 'cluster' is not pejorative, and is considered 'conservation' as it applies to the ordinance.

Regarding waivers, the Town Attorney noted road length is considered a dimensional standard and could be waived by the Board. Ms. Grinnell stated she is not in favor of this waiver. She noted all the dimensional modifications for lot sizes requested by the applicant seem to conflict with the long length of the road. Ms. Driscoll noted in 16.8.11.1.B open space has to be preserved but recreational space is not identified on the parcel. If the road were to conform to the ordinance, there would not be the level of opposition there is. We need to conform to the ordinance. Mr. Balano noted a traditional subdivision would have no open space and a higher density. Discussion followed regarding one road vs. two roads. Mr. Emerson stated the consensus is that the soils

ordinance will apply at this time. If the Board does not grant a waiver to this issue, the application cannot continue based on the evidence presented. Mr. Emerson noted that prior to final plan review, waivers are typically addressed, otherwise the applicant has no direction for final plan submittal. Mr. DiMatteo stated that, at some point, the Board will need to approve or deny the preliminary plan. Mr. Parkinson stated if there is a consensus that a waiver will not be granted for the road length, the applicant could return with a modification at the first meeting of October, or if there is a purchase and sale, not return at all.

Mr. Melanson moved to continue review of the Stone Meadow Cluster Subdivision on Brave Boat Harbor Road until the meeting of October 10, 2013

Mr. Balano seconded

Ms. Grinnell asked if the Board needs to provide guidance regarding the soils issue. Ms. Driscoll noted they have offered to utilize advanced technologies. [Mr. Parkinson] The Town Attorney's opinion on a waiver of the soils could be obtained in the meantime. Ms. McDaniel stated if the Board's consensus includes no waiver for the soils issue and the application is continued under the current ordinance, it should be denied as the density calculations are invalid, rather than waiting until October. Mr. Emerson stated he will be asking the Town Attorney for further information regarding the granting of waivers, as well as technical questions of the peer review engineer.

Motion carried with 3 in favor; 1 opposed (Driscoll); 0 abstentions (Ms. Grinnell did not vote) 9:53

Discussion on this item ends.

Mr. Mylroie announced that Council will hold a public hearing on September 9 to discuss whether to grant authority for the Council to obtain land that would be publically beneficial, subject to a public hearing, and placing this item on public ballot. He explained the Board can provide support for this effort. Mr. Emerson asked what the Planning Board's role would be. Mr. Mylroie stated the Board provides comp plan oversight and implementation, and the plan supports open space acquisition. The comp plan update committee has supported this effort to place it on the ballot. Mr. Balano stated he is supportive of open space acquisition, but would like to see the Planning Board involved in purchase decisions. Mr. Mylroie stated the Board would still have a role to review and comment. Mr. Emerson stated he would like to see language in the ordinance stating the Board has a role. Ms. Wells noted there is also an Open Space Committee that should be involved. Ms. Grinnell stated this should have come to the Board before now. Ms. Wells asked who brought this forward. Mr. Mylroie stated it was initiated by Jeff Thompson and himself. Ms. Wells stated these various committees should have been involved. Mr. Emerson asked that Board members attend the public hearing on September 9, and he will state the Board concurs they want to be involved in the process.

The Kittery Planning Board meeting of August 29, 2013 adjourned by rule at 10:01 p.m.  
Submitted by Jan Fisk, Recorder, September 3, 2013